

## The “Factors” to Consider in Employee Discipline

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Workplace misconduct and performance issues are a fact of life in any workplace. It is management’s response to these issues that determine whether a workplace is effective. If a manager does not take an appropriate action when a subordinate commits an act of misconduct in the workplace, the manager can be seen as a weak leader and may lead to a break down in the effectiveness of the work unit. If a manager reacts too harshly in disciplining an employee, morale and productivity can suffer.

Proposing an adverse action can be a difficult and emotional event for a manager. Most managers do not have experience in imposing discipline and have difficulty determining a reasonable punishment. In addition, when management removes, demotes, or suspends an employee for more than 14 days the employee has the right to appeal the action to the Merit Systems Protection Board (MSPB). The MSPB can decrease management’s punishment decision if the administrative judge finds that the penalty selected by the deciding official is unreasonably harsh, and can overturn the entire action if there is not a preponderance of evidence to support the charge.

Fortunately, the MSPB crafted factors that are used in selecting a reasonable penalty for an employee that commits misconduct. These 12 factors are called the Douglas Factors, so named after the case, *Douglas v. Veterans Administration* (5 MSPR 280, 1981). Managers responsible for disciplining federal civilian employees must consider these factors. The Douglas Factors help to create a framework for considering a proper punishment that addresses the misconduct, is fair to the employee, and is for the good of the federal service. These factors provide some consistency and predictability to punishments, as they require all managers to consider the same matters in reaching a decision concerning proper punishment. The Douglas Factors take the emotion out of the equation and focus a supervisor on the facts.

The Douglas Factors also protect an employee’s rights. In general, an employee’s first line supervisor will propose an adverse action. The employee then has an opportunity to reply to the deciding official who is likely the employee’s intermediate or senior rater. By understanding the Douglas Factors an employee can make a reply that takes the factors into account. An employee may want to focus their reply on factors such as their past work performance, past disciplinary history, and potential for rehabilitation. A manager must also consider punishments given to other employees for similar misconduct.

The Douglas Factors are:

- The nature and seriousness of the offense and its relation to the employee's duties, position, and responsibilities, including whether the misconduct was intentional or for personal gain.

- The employee's job level and type of employment, including supervisory or fiduciary role, contact with the public, and prominence of the position.
- The employee's past disciplinary record.
- The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.
- The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.
- Consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- Consistency of the penalty with the DA Table of Penalties Pertaining to Various Offenses (AR690-700, Chapter 751, C5, Table 1-1).
- The notoriety of the offense or its impact upon the reputation of the Department of Army.
- The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been previously warned about the conduct in question.
- The potential for the employee's rehabilitation.
- Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of the others involved in the matter.
- The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee and others.

Many federal agencies, including the Department of the Army, have penalty guides for various forms of misconduct. The Douglas Factors allow a manager to utilize a penalty guide, but also requires that managers consider the other factors. A manager who simply states they followed the penalty guide may find their punishment second-guessed by the MSPB. An exception to this rule is in some instances where Congress has mandated a penalty and a manager is not required to make a Douglas Factor analysis. For example, Congress has mandated an automatic 30-day suspension for an employee who willfully misuses a government vehicle.

By considering and addressing all of the Douglas Factors supervisors can have confidence that they are taking a proper action concerning an employee's misconduct. By knowing the factors involved in reaching an appropriate punishment an employee can be prepared to present a reply that will support a lesser punishment.

Supervisors of federal employees are advised to work closely with their civilian personnel representative and labor counselor when issues of employee misconduct arise.

